

### **13-42-128 Prohibited acts and practices.**

- (1) A provider may not, directly or indirectly:
- (a) include a secured debt in a plan, except as authorized by law other than this chapter;
  - (b) misappropriate or misapply money held in trust;
  - (c) settle a debt on behalf of an individual, unless the individual assents to the settlement after the creditor has assented;
  - (d) take a power of attorney that authorizes it to settle a debt;
  - (e) exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;
  - (f) initiate a transfer from an individual's account at a bank or with another person unless the transfer is:
    - (i) a return of money to the individual; or
    - (ii) before termination of an agreement, properly authorized by the agreement and this chapter, and for:
      - (A) payment to one or more creditors pursuant to an agreement; or
      - (B) payment of a fee;
  - (g) offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;
  - (h) offer, pay, or give a gift or bonus, premium, reward, or other compensation to a lead generator or other person for referring a prospective customer, if the person making the referral:
    - (i) has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral; or
    - (ii) compensates its employees on the basis of a formula that incorporates the number of individuals the employee refers to the provider;
  - (i) receive a bonus, commission, or other benefit for referring an individual to a person;
  - (j) structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge on payment of the principal amount of the debt;
  - (k) compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;
  - (l) settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment:
    - (i) is in full settlement of the debt; or
    - (ii) is part of a settlement plan, the terms of which are included in the certification, that, if completed according to its terms, will satisfy the debt;
  - (m) make a representation that:
    - (i) the provider will furnish money to pay bills or prevent attachments;
    - (ii) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or
    - (iii) participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;
  - (n) misrepresent that it is authorized or competent to furnish legal advice or perform legal services;
  - (o) represent in its agreements, disclosures required by this chapter, advertisements, or Internet website that it is:

- (i) a not-for-profit entity unless it is organized and properly operating as a not-for-profit entity under the law of the state in which it was formed; or
- (ii) a tax-exempt entity unless it has received certification of tax-exempt status from the Internal Revenue Service and is properly operating as a not-for-profit entity under the law of the state in which it was formed;
- (p) take a confession of judgment or power of attorney to confess judgment against an individual;
- (q) employ an unfair, unconscionable, or deceptive act or practice;
- (r) knowingly omit any material information or material aspect of any provider's service, including:
  - (i) the amount of money or the percentage of the debt amount that an individual may save by using the provider's service;
  - (ii) the amount of time necessary to achieve the results that the provider represents as achievable;
  - (iii) the amount of money or the percentage of each outstanding debt that the individual is required to accumulate before the provider will:
    - (A) initiate an attempt with the individual's creditors or debt collectors to negotiate, settle, or modify the terms of the individual's debt; or
    - (B) make a bona fide offer to negotiate, settle, or modify the terms of the individual's debt;
  - (iv) the effect of the service on:
    - (A) an individual's creditworthiness; or
    - (B) collection efforts of the individual's creditors or debt collectors;
  - (v) the percentage or number of individuals who achieve the results that the provider represents are achievable; and
  - (vi) whether a provider's service is offered or provided by a nonprofit entity; or
- (s) make or use any untrue or misleading statement:
  - (i) to the administrator; or
  - (ii) in the provision of services subject to this chapter.
- (2) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:
  - (a) purchase a debt or obligation of the individual;
  - (b) receive from or on behalf of the individual:
    - (i) a promissory note or other negotiable instrument other than a check or a demand draft; or
    - (ii) a post-dated check or demand draft;
  - (c) lend money or provide credit to the individual, unless the loan or credit is:
    - (i) a deferral of a settlement fee at no additional expense to the individual; or
    - (ii) through an affiliate that is licensed separately from the provider;
  - (d) obtain a mortgage or other security interest from any person in connection with the services provided to the individual;
  - (e) except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:
    - (i) the administrator, on proper demand;
    - (ii) a creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or
    - (iii) the extent necessary to administer the plan;
  - (f) except as otherwise provided in Subsection 13-42-123(4)(c), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;
  - (g) charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly

- related to debt-management services or educational services concerning personal finance, except to the extent such services are expressly authorized by the administrator; or
- (h) furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.
- (3) This chapter does not authorize any person to engage in the practice of law.
- (4) A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining, an extension of credit or other service from a lender or service provider, except:
  - (a) for educational or counseling services required in connection with a government-sponsored program; or
  - (b) as authorized in Subsection 13-42-123(4)(d).
- (5) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:
  - (a) owns more than 10% of the person; or
  - (b) is an employee or affiliate of the person.

Amended by Chapter 152, 2012 General Session